

ESTTA Tracking number: **ESTTA285490**

Filing date: **05/22/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92050685
Party	Defendant Executive Development Architects LLC
Correspondence Address	Leigh Augustine Sherman & Howard LLC 633 Seventeenth Street, Suite 3000 Denver, CO 80202 UNITED STATES laugustine@sah.com
Submission	Motion for Summary Judgment
Filer's Name	Leigh Augustine
Filer's e-mail	laugustine@sah.com, dschachter@sah.com
Signature	/Leigh Augustine/
Date	05/22/2009
Attachments	2009-05-22 Signed Mot for Summ Judg.PDF (11 pages)(327167 bytes) 2009-05-22 Signed Declaration.PDF (27 pages)(947825 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark
Registration No. 3468426
Cancellation No. 92050685
Registered: July 15, 2008
Mark: IGNITING BUSINESS
International Class: 35

RENEE SHATANOFF,

Petitioner

v.

EXECUTIVE DEVELOPMENT
ARCHITECTS LLC,

Registrant.

REGISTRANT'S MOTION FOR SUMMARY JUDGMENT

Executive Development Architects, LLC ("Registrant") hereby moves for Summary Judgment. The facts as pleaded in the Petition for Partial Cancellation ("Petition"), even if true, do not provide Petitioner with adequate grounds to support the Petition. As such, the same are insufficient.

This Motion for Summary Judgment (this "Motion") is made within the time prescribed in 37 C.F.R. 2.127(e)(1) and is filed timely. Insofar as the Motion falls under F.R.Civ.P. 12(f), the Board has discretion to hear the same at this time. To the extent that the Motion requires the Board

to look beyond the pleadings, the Motion may be considered a motion for summary judgment pursuant to F.R.Civ.P. Rule 56(c).

I. INTRODUCTION & BACKGROUND

Renee Shatanoff's ("Petitioner's") Petition prays for the narrowing of the goods and services related to Registrant's mark "IGNITING BUSINESS" (the "Registered Mark"). See *Pet. for Canc.* ¶ 9. Registrant's Answer (the "Answer") sets forth its responses and defenses to Petitioner's claims, specifically, that Registrant is, in fact, using its "IGNITING BUSINESS" mark in connection with all goods and services for which it is registered, namely, "business consulting services," in International Class 35. Neither of the parties have conducted any discovery.

The defenses to which this Motion for Summary Judgment apply are all relevant to the Board's assessment of the claims asserted in the Petition. The legal issues underlying Petitioner's claims and Registrant's defenses are not in dispute. This Motion should be sustained because Petitioner's claims are not supported either by the legal standards applicable to such Petitions submitted under 15 U.S.C. § 1068 or 37 CFR § 2111(b), or by the standards relevant to the Board's review for Petitions for Partial Cancellation.

II. ARGUMENT

A. **The Petition, on its face, fails because it is built on conjecture and speculation, rather than facts.**

As will be shown through this Motion and the corresponding Declaration, Registrant is, in fact, using the Registered Mark IGNITING BUSINESS for exactly the same goods and services as it is registered, namely, “business consulting services.”

Through a Federal Trademark registration, it is presumed that (1) the registration encompasses all services of the type described, (2) that all services move in all normal channels of trade, and (3) that all services are available to all potential customers. See *In re Elbaum*, 211 USPQ 639, 640 (T.T.A.B. 1981); *In re Optica Int’l*, 196 USPQ 775, 778 (T.T.A.B. 1977); TMEP § 1207.01(a)(iii). The burden of proof, therefore, is on the Petitioner to show via its Petition. Petitioner did not meet this burden for the following reasons.

1. Petitioner’s Allegation 4 is Incorrect. Petitioner’s Allegation 4 states,

“Upon information and belief, Registrant is in the business of providing executives, entrepreneurs, and business professionals a training program that combines business principles with neuroscience and psychology to manage [*sic*] one’s energy levels and concentration “to achieve consistent, sustainable peak performance.” The ultimate objective of the training program is to build a spirit-based business culture.” *Pet. for Canc.*, ¶ 4.

Registrant admits that the above allegation is true, however, the allegation only describes a mere fraction of the *business consulting services* provided by Registrant. In addition to Petitioner’s allegation, Registrant Executive Development Architects, LLC consults, advises and trains executives, business owners, entrepreneurs and their teams, individuals, business entities, municipalities, and professional associations regarding ways to improve, increase and develop their respective businesses through creating new business cultures; Executive Development Architects, LLC also consults, analyzes and improves current organization and management systems as well as

individual business performance; finally, Executive Development Architects, LLC creates strategic alliances between its clients and charitable organizations. See *Declaration of Lisa Niederman*, ¶ 4.

The Executive Development Architects LLC promotional effort within the business community is centered upon profit and nonprofit businesses, professionals, as well as industry and professional associations. See *Declaration of Lisa Niederman*, ¶ 5.

The targeted customers of Executive Development Architects services are individuals, executives, entrepreneurs, business owners, teams, for-profit and non-profit businesses, municipalities, and professional associations. See *Declaration of Lisa Niederman*, ¶ 6.

As such, Registrant's three-word recitation of *business consulting services* fully and accurately describes the wide range of services provided under Registrant's IGNITING BUSINESS mark.

2. Petitioner's Mark and Petitioner's Services Provided are Confusingly Similar to Registrant's; and Petitioner's Target Customers are the Same as Registrant's.

Petitioner correctly alleges that Registrant provides its *business consulting services* to "executives, entrepreneurs, and business professionals," *Pet. for Canc.*, ¶ 4. Notwithstanding the fact that Petitioner's business is similarly "directed to entrepreneurs," *Petitioner's Response to Office Action*, Nov. 3, 2008, p.3, the marks themselves under which the services are provided by both Petitioner and Registrant are virtually identical, IGNITING BUSINESS and IGNITING BUSINESS WITH A SOCIAL BEAT. As such, Petitioner's efforts would be similarly thwarted if it attempted to register "McDONALD'S WITH A SOCIAL BEAT" for restaurant services. It

follows that the Trademark Examining Attorney succinctly and correctly rebuffed Petitioner's claims that the marks are "phonetically different" merely because Petitioner included the additional words "WITH A SOCIAL BEAT." *Response to Office Action*, p.4. The Trademark Examining Attorney stated,

"In a likelihood of confusion termination, the marks are compared for similarities in their appearance, sound, meaning or connotation and commercial impression. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swat Ltd.*, 8 USPQ2d, 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); see TMEP §1207.01(b). The marks of the parties are similar in sound, appearance and meaning. The dominant part of each party's mark are the words "igniting business." Therefore, the similarities in the elements that exist are sufficient to find a likelihood of confusion." *Final Office Action to Petitioner*, Dec. 14, 2008, pp.3-4.

3. Petitioner's Allegation 7 is Incorrect. Petitioner alleges that Registrant is not currently using the IGNITING BUSINESS mark in connection with "business consulting services." This is patently false. Registrant currently, and has continuously since February 6, 2004, consults, advises and trains executives, business owners, entrepreneurs and their teams, individuals, business entities, municipalities, and professional associations regarding ways to improve, increase and develop their respective businesses through creating new business cultures; Executive Development Architects, LLC also consults, analyzes and improves current organization and management systems as well as individual business performance; finally, Executive Development Architects, LLC creates strategic alliances between its clients and charitable organizations. See *Declaration of Lisa Niederman*, ¶ 4.

Additionally, please see *Declaration Attachment 1*, demonstrating actual use of the IGNITING BUSINESS mark on a contract with a client, dated September 20, 2004. Client names have been blacked out for confidentiality purposes.

Please see *Declaration Attachment 2*, demonstrating actual use of the IGNITING BUSINESS mark on a contract with a client, dated June 27, 2005. Client names have been blacked out for confidentiality purposes.

Please see *Declaration Attachment 3*, demonstrating actual use of the IGNITING BUSINESS mark on a contract with a client, dated December 8, 2008. Client names have been blacked out for confidentiality purposes.

Please see *Declaration Attachment 4*, demonstrating actual use of the IGNITING BUSINESS as it is shown on Lisa Niederman's current business card.

Please see *Declaration Attachment 7*, demonstrating actual use of the IGNITING BUSINESS mark on current promotional materials.

Please see *Declaration Attachment 8*, demonstrating actual use of the IGNITING BUSINESS mark on current promotional materials.

Please see *Declaration Attachment 9*, demonstrating actual use of the IGNITING BUSINESS mark on current promotional materials.

Please see *Declaration Attachment 10*, demonstrating actual use of the IGNITING BUSINESS mark on current seminar materials.

4. Petitioner's Allegation 8 is Incorrect. Petitioner alleges that "Registrant's logo and website do not contain the IGNITING [*sic*] BUSINESS mark," and included, as Petitioner's Exhibit D, a screenshot of Registrant's website.

This allegation too, is false. Please see *Declaration Attachments 5 and 6*, which show the IGNITING BUSINESS mark in actual use, found on the web page located at www.performancevelocity.com.

The fact that Registrant has withdrawn the IGNITING BUSINESS mark from certain (but not all) pages with Registrant's website is not an abandonment of the mark

B. The Petition for Cancellation fails under the two-part *Euro-Star* Test.

1. The Test.

Under the Trademark Law Revision Act of 1988 ("TRLA"), the Lanham Act was amended to allow the Patent and Trademark Office ("PTO") to order cancellation "in whole or in part" by modifying a registration. See *See McCarthy on Trademarks*, § 20:44. However, the Board has permitted restrictions only if they are "commercially significant." See *Eurostar v. "Euro-Star" Reitmoden GmbH & Co. KG*, 34 U.S.P.Q.2d 1266, at 1270 (T.T.A.B. 1994). A restriction is "commercially significant" if its entry would avoid a finding of likelihood of confusion or if the registrant has set forth its goods in terms that overstate the range of goods or the trade channels in which those goods move, so that fairness demands that an appropriate restriction to the registration be entered. See *Procter & Gamble Co. v. Sentry Chemical Co.*, 22 U.S.P.Q.2d 1580, at 1592

(T.T.A.B. 1992). The *Euro-Star* decision further restricted this holding. The Euro-Star court held, “Putting the matter simply, we believe that, in a case involving likelihood of confusion, we should not exercise our authority ... to permit an action to restrict an application or registration where such a restriction is divorced from the question of likelihood of confusion. We believe, moreover, that a party should be held to have established a proper likelihood of confusion, it pleads and proves that:

- (i) the entry of proposed restriction to the goods or services in its opponent’s application or registration will avoid a finding of likelihood of confusion and
- (ii) the opponent is not using its mark on those goods or services that will be effectively excluded from the application or registration if the proposed restriction is entered.” *Id.*

The *Euro-Star* court went on to say that, by applying the above two-part test “in the manner we have now determined to apply it, we can virtually eliminate *frivolous or harassing* restriction proceedings and devote our administrative resources to those kinds of cases intended by the drafters of the amendment: those in which restrictions to applications and registrations serve to avoid findings of likelihood of confusion.” *Id.* [emphasis added].

“Moreover, the Board’s recent practice under [the amendment]--in permitting registrations to be attacked simply on the grounds that the statement of goods and services are overbroad--is at odds with the Patent and Trademark Office practice of encouraging applicants to set forth their descriptions of goods and services in relatively broad terms.” *Euro-Star*, at 1271.

2. Application.

The first part of the *Euro-Star* test fails in the matter before us because Petitioner has not provided the TTAB with any proposed restriction to Registrant's services. Regardless, the entry of *any* proposed restriction would not, as correctly recognized by the Trademark Examining Attorney, avoid a finding of likelihood of confusion because the primary portion of the marks are identical, because Petitioner is seeking to register the mark for virtually the same services as Registrant's mark, and because Petitioner's proposed mark and Registrant's mark are targeted at the exact same potential customers.

The second part of the *Euro-Star* test similarly fails in the matter before us because, as is demonstrated in the Declaration of Lisa Niederman, Registrant is, in fact, using the IGNITING BUSINESS mark on all services as detailed in the Registration, namely, *business consulting services*, and, as such, no "carve-out" could be effectively excluded from the application, even if a proposed restriction is entered.

"Allowing this kind of issue to be tried forces registrants *needlessly to spend time and money to defend their registrations* and requires [the Board] to decide the breadth or scope of a description of goods or services in the abstract, unrelated to any determination of likelihood of confusion." *Id.* [emphasis added].

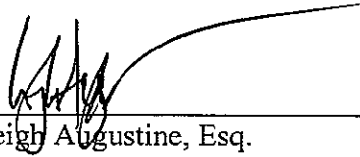
III. CONCLUSION

In light of the above statements, Registrant urges the Board to see this case for what it is: a frivolous and harassing lawsuit, forcing Registrant to needlessly spend time and money to defend its registration, when, even if a proposed amendment to Registrant's services were accepted, it

would, in no way alleviate the fact that a likelihood of confusion would still pervade Petitioner's and Registrant's marks.

For the reasons stated above, Petitioner's Petition for Partial Cancellation should be denied in its entirety, and this Motion for Summary Judgment should be granted.

Dated: May 22, 2009



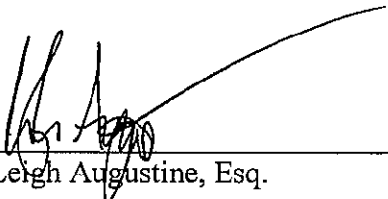
Leigh Augustine, Esq.
Sherman & Howard L.L.C.
633 Seventeenth Street, Suite 3000
Denver, Colorado 80202
Phone: (303) 299-8146
Fax: (303) 298-0940

Attorney for Registrant
EXECUTIVE DEVELOPMENT ARCHITECTS, LLC

CERTIFICATE OF SERVICE

I, Leigh Augustine, hereby certify that on this 22nd day of May, 2009, the foregoing **MOTION FOR SUMMARY JUDGMENT** and the corresponding **DECLARATION OF LISA NIEDERMAN** were served upon Petitioner's counsel of record by depositing same with the U.S. Postal Service, first-class postage prepaid, addressed to Petitioner's counsel address of record as follows:

Strategic Legal Counseling
Attn: Louis F. Teran
1055 East Colorado Blvd.
Suite 500
Pasadena, CA 91106



Leigh Augustine, Esq.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark
Registration No. 3468426
Cancellation No. 92050685
Registered: July 15, 2008
Mark: IGNITING BUSINESS
International Class: 35

RENEE SHATANOFF,)	
)	
Petitioner,)	
)	
v.)	
)	
EXECUTIVE DEVELOPMENT)	
ARCHITECTS LLC,)	
)	
Registrant.)	
)	

DECLARATION OF LISA NIEDERMAN

I, Lisa Niederman, hereby declare as follows:

1. I am the President and founder of Executive Development Architects LLC. I have served in this capacity since February 25, 1998. I make this Declaration on behalf of Executive Development Architects LLC regarding the Motion for Summary Judgment filed in the above-captioned matter. I make the following statements based on my personal knowledge.
2. The primary place of business for Executive Development Architects LLC is 1317 South Vine Street, Denver, Colorado 80210.
3. I am responsible for overseeing all aspects of Executive Development Architects LLC, including defining and executing the business vision, mission, business strategies and

goals. Also, I am responsible for strategy and execution of sales, marketing, programs and product/service development and delivery to clients, and all business administration duties.

4. Executive Development Architects, LLC consults, advises and trains executives, business owners, entrepreneurs and their teams, individuals, business entities, municipalities, and professional associations regarding ways to improve, increase and develop their respective businesses through creating new business cultures; Executive Development Architects, LLC also consults, analyzes and improves current organization and management systems as well as individual business performance; finally, Executive Development Architects, LLC creates strategic alliances between its clients and charitable organizations.

5. The Executive Development Architects LLC promotional effort within the business community is centered upon profit and nonprofit businesses, professionals, as well as industry and professional associations.

6. The targeted customers of Executive Development Architects services are individuals, executives, entrepreneurs, business owners, teams, for-profit and non-profit businesses, municipalities, and professional associations.

7. The Attachments to this Declaration are as follows:

- Attachment 1 demonstrates actual use of the mark IGNITING BUSINESS on a contract signed by a client and dated September 20, 2004;
- Attachment 2 demonstrates actual use of the mark IGNITING BUSINESS on a contract signed by a client and dated June 27, 2005;
- Attachment 3 demonstrates actual use of the mark IGNITING BUSINESS on a contract signed by a client and dated December 8, 2008;

- Attachment 4 is a current, true and accurate copy of Registrant's business card;
- Attachments 5 and 6 are printouts of different web pages on which the mark is used on Registrant's website, domain name www.performancevelocity.com, on May 4, 2009;
- Attachments 7, 8, and 9 are Registrant's current promotional materials and handouts; and
- Attachment 10 shows Registrant's current seminar materials.

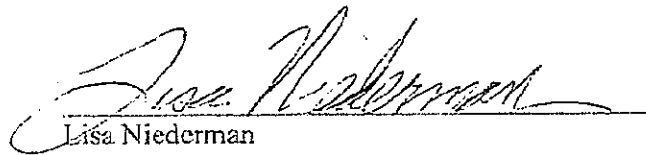
8. I understand that the Petitioner, Renee Shatanoff, asserts that confusion is not likely because she perceives there to be differences between the marks IGNITING BUSINESS and IGNITING BUSINESS WITH A SOCIAL BEAT, and she perceives there to be negligible differences between the services associated with the two aforementioned marks, as my services are "business consulting services" and her services are "Consulting services for individual entrepreneurs for the development of business through positive media exposure of their proactive involvement in charitable organizations; Business consultation relating to development of a service oriented business model with a focus on charitable contributions." Nonetheless, I respectfully disagree with Petitioner's position.

9. For the foregoing reasons, I believe the Petition for Partial Cancellation should be denied, as there would clearly be a likelihood of confusion between my IGNITING BUSINESS mark and Petitioner's IGNITING BUSINESS WITH A SOCIAL BEAT mark.

longtime
F: 303.298.0940

10. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed at Denver, CO on May 21, 2009.



Lisa Niederman
President and Founder
Executive Development Architects, LLC

Attachment 1: Actual use of the mark IGNITING BUSINESS on a contract dated September 20, 2004.

Performance Velocity™
Igniting Business™

Continuation Coaching

Registration

Mr. _____
Mr./Ms. First Name Last Name

Address City State Zip

Work Phone Home Phone

Email address Fax number

Continuation Coaching

~~\$400~~ 4 sessions 30 minute sessions

✓ \$100 4 sessions
(Special pricing for preferred customer)

Name on Credit Card

Credit Card (Visa/Master Card)

Card Number

Expiration Date

Signature

Date

9/20/04

Please fax signed form to:

Performance Velocity™
Fax: 303-744-2464 or
303-279-1416

Performance Velocity™ instructs executive, entrepreneurs and professionals to direct thoughts and attitudes to achieve business results. We are fully committed to your success.

Attachment 2: Actual use of the mark IGNITING BUSINESS on a contract dated June 27, 2005.

FROM : [REDACTED]
JUN 27 05 03:32P

FAX NO. : [REDACTED]
Lise Hogue, [REDACTED]

Jun: 28 2005 08:17AM P1



Performance Velocity™
igniting business.

Please sign and date below and fax to:

Performance Velocity LLC
Fax: 303.733.1617

I have read the foregoing statements, understand them fully, and will participate to the best of my ability. I am ready to begin the successful journey!

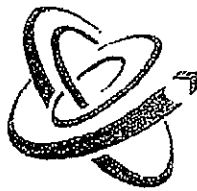
Signature

[REDACTED SIGNATURE]

Date

6/27/05

Attachment 3: Actual use of the mark IGNITING BUSINESS on a contract dated
December 8, 2008.



Performance Velocity™
igniting business.

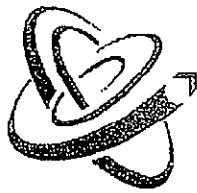
Referral Agreement

This Agreement is entered into to protect certain confidential information which may be disclosed by Performance Velocity LLC with a business address at 1317 South Vine Street, Denver, Colorado USA 80210 to _____ with an address at _____ ("Recipient").

1. **Confidential Information.** "Confidential information" shall mean any and all non-public or proprietary information relating to Performance Velocity business. Examples of Confidential Information include (but are not limited to): trade secrets, business plans, any information regarding customers, prospective customers, clients, business contacts, prospective and executed contracts, marketing and/or sales plans, or any other plans and proposals used by Performance Velocity in the course of its business, information regarding technology, strategy, products in development, and any information regarding Performance Velocity's present or future business plans, financial information, or any intellectual property, whether any of the foregoing is embodied in hard copy, computer-readable form, or otherwise. Any other information that is not included in the above list may be designated as Confidential Information by being marked as confidential or proprietary (or words of similar import) at the time of disclosure, or disclosed in any other manner if identified as confidential or proprietary at the time of disclosure.

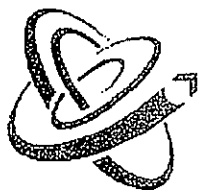
Confidential Information shall not, however, include any information which Recipient can establish (i) was publicly known and made generally available in the public domain prior to the time of disclosure to Recipient by Disclosing Party; (ii) becomes publicly known and made generally available after disclosure to Recipient by Disclosing Party through no action or inaction of Recipient; or (iii) is in the possession of Recipient, without confidentiality restrictions, at the time of disclosure by Disclosing Party as shown by Recipient's files and records immediately prior to the time of disclosure.

2. **Period of Protection.** Recipient has a duty to protect the Confidential Information disclosed under this Agreement for a period of five (5) years from the date of disclosure of such information.
3. **Authorized Use and Protection.** Recipient shall use the Confidential Information solely to evaluate a potential consulting, employment or other relationship with Performance Velocity such as strategic alliance. Recipient shall protect the Confidential Information with a reasonable degree of care to prevent unauthorized use, disclosure or publication.
4. **Restrictions.** Recipient (a) shall not disclose the Confidential Information to third parties unless and to the extent authorized by Performance Velocity; and (b) shall not reproduce any such information except as may reasonably be required for the authorized use; and (c) shall only disclose such information as directed by Performance Velocity to potential or actual employees or consultants for purposes of performing the authorized use. Recipient shall inform Performance Velocity of the names and contact information of any potential employee or consultant before Recipient discloses Confidential Information to that person, if Performance Velocity authorized Recipient to do so.
5. **Marketing Materials.** Recipient may only distribute to (prospective), customers Performance Velocity's "Executive On Board", market brochure. Any other market materials such as; e-brochures, e-blasts, sales and seminar presentations must have the written approval by Performance Velocity before distribution to any customer, business organizations and associations.



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igniting business.

6. **Referral Fees.** Recipient will receive 10% of the project fee, for each referral that Performance Velocity closes business. The referral fee is to be paid to the recipient after Performance Velocity has collected and/or received all monies and fees due at the completion of the project.
7. **No License Granted.** Neither party acquires any intellectual property rights or licenses under this Agreement.
8. **No Warranty.** All Confidential information is provided "as is". Disclosing party makes no warranties, express, implied or otherwise, regarding its accuracy, completeness or performance.
9. **Judicial Orders.** In the event Recipient is directed to disclose Performance Velocity confidential information pursuant to a valid judicial order, such disclosure shall not be deemed to be a breach of this Agreement, provided the Recipient: (a) provides timely notice of such order to Performance Velocity; and (b) cooperates reasonably with Performance Velocity efforts to contest or limit the scope of such order.
10. **Governing Law/Equitable Relief.** This Agreement shall be governed and interpreted in accordance with the laws of the State of Colorado without regard to its conflicts of law provisions. The parties acknowledge that money damages would not be sufficient remedy for any breach of this Agreement and that Performance Velocity shall be entitled to seek equitable relief from Recipient as a remedy for any breach. Equitable remedies shall not be deemed to be exclusive remedies for a breach, but shall be in addition to all other remedies at law or equity available to Performance Velocity.
11. **Miscellaneous.** The parties perform their respective obligations hereunder without charge to the other. The parties do not intend that any agency, partnership or exclusive relationship is created between the parties by this Agreement. Neither party shall assign any rights hereunder. Neither party shall publicly disclose the existence of this Agreement without prior written approval of the other party.
12. **Counterparts; Facsimile Signatures.** This Agreement may be executed in counterparts, each of which (or any combination of which) when signed by all of the parties shall be deemed an original, but all of which when taken together shall constitute but one agreement. Signatures to this document transmitted by facsimile or electronic signature shall be as fully binding as original signatures.
13. **Entire Agreement/Changes.** This Agreement contains the entire understanding of the parties on the subject matter described herein. All additions or modifications to this Agreement must be made in writing and must be signed by an authorized representative of each party.



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In witness whereof, the Parties have executed this Agreement as of the date below.

Performance Velocity

Lisa Nederman
Signature

Lisa Nederman
Print Name

CEO
Title

12/11/08
Date

Recipient

[Redacted Signature]
Signature

[Redacted Name]
Print Name

CEO
Title

12/8/08
Date

Attachment 4: Copy of Registrant's business card.



Performance Velocity™
igniting business.

Lisa Niederman
CEO

1317 South Vine Street
Denver, CO 80210
303.744.2464 Direct
lisa@performancevelocity.com
www.performancevelocity.com

Attachment 5: Printout of web page on which the mark is used on Registrant's website,
domain name www.performancevelocity.com, dated May 4, 2009.



Performance Velocity
speed to results™

Executive On-Boarding
Executive Performance
Executive Legacy
Igniting Leadership
Customized Programs

Home Overview

Programs

News

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Links

Contacts

303.744.2464

News

Colorado Rising Business TV

Colorado Rising host, Larry Nelson discusses with Lisa Niederman, performance management strategies, practices and competencies to accelerate the onboarding and transitions of new leaders, redeployed executives and their teams to deliver quick wins in less than 90 days. Watch

Igniting Business® Series - Energy Intelligence™ Interviews

Award winning host, Dr Pat Baccili talks with Lisa Niederman in a series of online radio interviews. Lisa Niederman discusses how to ignite your business and personal life with Energy Intelligence™ during programs recently aired on VoiceAmerica and HealthyLife.net radio shows.

Thriving in these rapidly changing times requires strategies that allow critical thinking and decision-making skills to be keen and spot-on. Mastering the



Attachment 6: Printout of web page on which the mark is used on Registrant's website,
domain name www.performancevelocity.com, dated May 4, 2009.



Performance Velocity
speed to results™

[Home](#) [Overview](#) [Programs](#) [News](#) [About Us](#) [Links](#) [Contacts](#) 303.744.2464

Events

Speaking Engagements

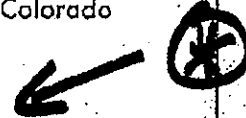
- Colorado Chapter-Financial Executives International, "Speed to Proficiency" Executive and Career On Boarding
- "Why Time Management Strategies Don't Work...and What Will" presented by Performance Velocity and Sales Productivity Consultants
- "Mental Agility: Leading the Business Game" presented to Colorado Society of CPAs

Interviews

Igniting Business® Series -Energy Intelligence™ Interviews

Award winning host, Dr. Pat Baccini talks with Lisa Niederman in a series of online radio interviews. Lisa Niederman discusses how to ignite your business and personal life with Energy Intelligence™ during programs recently aired on VoiceAmerica and HealthyLife.net radio shows.

Listen:



Attachment 7: Registrant's current promotional materials and handouts.



Performance Velocity™
igniting business.

A How-To Workshop

Mental Agility 2.0 – Best Practices for Business Leaders

The Art and Science of Achieving Exceptional Results

Mental agility is critical. In today's fast-paced world, we have to think and execute faster than the competition. Yet, complexity, information overload and rapid change place constant obstacles in our path. How do we navigate through these challenges and stay in front of the business game? The key is with our mental agility. This seminar includes the core practices for mental agility that will enable you to:

- use your experience to fine-tune your overall performance
- tap into the 3 fundamentals of mental agility even in the midst of chaos
- rapidly focus, prioritize and complete your immediate tasks and strategic business projects
- make the right decisions rapidly to accomplish goals on time, within budget
- increase your concentration to stay the course in order to complete important projects and still have time to relax and enjoy.

There is limited attendance to ensure participants have opportunities to practice these skills throughout the seminar. Enroll now!

Past seminar participants are saying . . .

"Way more than expected." – Jim, Account Executive

"Thank you for making learning effortless." – Kathy, Director of Sales

Details: June 19, 3-5 p.m., \$49 by June 12th, \$69 after June 12th

Also on June 29, 1-3 p.m.; combine with Managing Your Time from the Inside Out - both sessions for only \$88 by June 22nd, \$118 after June 22nd

Attachment 8: Registrant's current promotional materials and handouts.



Performance Velocity™
igniting business.

Upcoming Seminars

Managing Your Time from the Inside Out

Hands-on Seminar for Entrepreneurs and Leaders

Time is your most important business asset. But when your days are a frenzied schedule of impossible deadlines, missed opportunities and less than satisfactory relationships, time becomes an illusive commodity. The premise of this seminar is simple: you can have an overwhelming list of things to do each day and still be successful, productive, and energized. As Peter Drucker says, "nothing else ... distinguishes effective executives as much as their ... care of time."

Here's what you'll learn in this hands-on seminar:

- How to use a tool you already possess for on-demand results
- Strategies that will capitalize on your time management tools to increase your success and productivity
- How to keep focused even in the middle of chaos
- Methods for maintaining your creativity and productivity levels

Past seminar participants are saying . . .

"'Novel approach' . . . showing how to apply to the everyday business world was very effective. You covered an incredible amount of material . . . Delivered on your promise."
– Karen, COO

"I think the simplicity of the (practices) is what separates Performance Velocity from other time management techniques and strategies. Thanks!" - David, Business Owner

"Yesterday's seminar was phenomenal! What I'm truly floored by, however, is how immediately effective the techniques were. . . I'm so glad I took the time to attend!" - Ashley, Company President

Details: June 29th, 3-5 p.m., \$49 by June 22nd, \$69 after June 22nd;
combine with Mental Agility 2.0 from 1-3 p.m. for only \$88 by June 22nd, \$118 after June 22nd

Attachment 9: Registrant's current promotional materials and handouts.



Performance Velocity™
igniting business.

About Performance Velocity®

Some businesses achieve extraordinary success; some are just average. The difference is that exceptional business leaders tap into the power of their "mental agility". Mental Agility is the ability to rapidly change your thinking to achieve your desired results. With an agile mind you can make the right decisions, have precise concentration and focus, and innovate rapidly.

Performance Velocity's programs teach business leaders to increase their mental agility. As the speed of business increases, having an agile mind is essential to stay in front of the competition. With a little bit of practice you'll find that "peak performance on demand" is yours, on call 24/7/365. Like others before you, you'll discover that our practices are Powerful, Proven and People-oriented.

Advanced Programs

Principles of Attitude

Our foundational program teaches the mental agility basics:

- Your Life Force Moment™
- Gratitude as a business tool
- Cancel/Clear, a strategy to direct your thoughts
- Laws of Performance

Mental agility is the skill needed by leaders today to keep pace with the speed of business. Principles of Attitude is the definitive system of practices that delivers peak performance on demand for your business.

Principles of Direction

Practice and application - these words are familiar to serious leaders. Principles of Direction accelerates your success by extending your practice of the basic mental agility tools to 11 specific business areas. New strategies that you will learn include:

- a practice to direct your attitude in crucial business moments
- innovative sales approaches
- a propellant for a productive day
- quick development of innovative and original ideas



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Executive Team



Lisa Niederman is founder and CEO of Performance Velocity LLC, a firm that specializes in developing executives, leaders and entrepreneurs. Lisa's twenty-five years in business began as an executive in the health care industry and expanded into assessment and coaching of executives, managers and teams in local and national industries. She has extensive experience and knowledge guiding senior management teams and businesses through tumultuous change. Lisa has a keen sensitivity to interweaving the people and management needs to inspire results. Ms. Niederman received her Masters Degree in Psychology and is past President of the ASTD-RMC. Lisa is a Certified Executive Coach with Nightingale-Conant Corp., founding member of the Women's Leadership Institute and she holds a black belt in the martial art of Aikido.



Deb Miller, COO of Performance Velocity, has over 25 years of experience in leadership roles for high technology companies. She is a results-oriented executive, with a broad background that includes expertise in technical management, financial analysis, business plan development, marketing research, and product management. Deb's expertise in leadership has qualified her to build, develop, and mentor high-performing teams and individuals in large, corporate groups as well as small, fast-moving entrepreneurial businesses. Ms. Miller's previous corporate roles include Global Development Manager for Educational Systems at IBM, Director of Development at Sybase, and Vice President of Development at Decisionism, a venture-funded startup. She was the founder and CEO of Pensieve Software, a voice recognition application company. Ms. Miller received a B.S. in Electrical Engineering from Kansas State University in 1977 and an M.B.A. from Colorado State University in 1986. Deb is an avid marathoner and holds a black belt in Tae Kwo.

Attachment 10: Registrant's current seminar materials.



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3 KEYS TO BEST IN BUSINESS CLASS

Your brain can change your business results

Facilitated by Performance Velocity

Your competition knows how your brain works. Do you? Brain research is creating a new operating manual for our brains. In this program, you'll learn to apply 3 aspects of your brain's abilities to increase your personal productivity, drive your business results, and avoid becoming a dinosaur in your industry.

Benefits: Upon completion of the program you will be able to:

- Use your goals to automatically filter information coming at you so you have the right information at the right time.
- Turn-around a potentially bad day to avoid making mistakes and damaging business relationships.
- Shift from fatigue to an energized state to create new ideas and execute your 'to-do' list with confidence.
- Gain insight into how your brain works and how to use it to perform at your very best.

Agenda:

- Our mental processes and the effect on business results
- Legacy systems in our minds
- Key 1: Attention
 - Using our internal administrative assistant to eliminate information overload and focus on what matters to our business
- Key 2: Attitude
 - How our brain can drive us, and our business, down the wrong road
- Key 3: Energy
 - Using our mind's energy to learn more and get faster results, even when the body is tired